

REMARKS/ARGUMENTS

In the Office Action mailed January 2, 2008, the Examiner imposed a restriction requirement with respect to Inventions A (claims 11-24) and B (claims 25-33) as well as a species election requirement with respect to Species A (Figs. 1-4) and B (Figs. 5-20).

Applicants traverse both requirements for the following reasons.

First, MPEP 1893.03(d) states in pertinent part:

“Examiners are reminded that unity of invention **>(not restriction practice pursuant to 37 CFR 1.141-1.146)< is applicable in international applications (both Chapter I and II) and in national stage applications submitted under 35 U.S.C. 371.”

See also, 37 CFR 1.475, which is expressly applicable to national stage applications.

The Examiner is reminded that the present US national phase application was submitted under 35 U.S.C. 371. Therefore, the restriction and species election practice according to 37 CFR 1.141-1.146 and MPEP 800 is inapplicable to the present application, such that the restriction requirement and species election requirement (i.e. made in accordance with 37 CFR 1.141-1.146 and MPEP 800) must be withdrawn for lack of a proper legal basis.

Furthermore, because the Examiner has not complied with the legal requirements of MPEP 1850 and/or 1893.03(d) concerning unity of invention, the present Office Action lacks a proper factual basis and should be withdrawn for this additional independent reason.

It is noted that pending claims 11-33 share at least one common or corresponding special technical feature that defines a “contribution which each of the claimed inventions, considered as a whole, makes over the prior art (Rule 13.2 PCT)” such that unity of invention is satisfied. For example, claims 11 and 25 recite, *inter alia*, the common special technical features of a rigid roof part, a linkage mechanism and at least one guide device. Any one of these common or corresponding special technical features is sufficient to satisfy the unity of invention requirement based upon the present facts.

Because 37 CFR 1.141-1.146 (in particular 37 CFR 1.143) and MPEP 800 are legally inapplicable to the present US national stage application according to MPEP 1893.03(d), there is no legal obligation to provisionally elect a restricted invention or a species in this response. Consequently, no provisional election is provided herein.

Second, although MPEP 800 is legally inapplicable to the present application, for good order, it is also noted that the restriction requirement and species election requirements do not comply with the requirements of MPEP 800.

For example, according to MPEP 803(II), “Examiners must provide reasons and/or examples to support conclusions . . .” See also, MPEP 814 (a “clear and detailed record” must be made) (Emphasis in original). This requirement is not satisfied in the present Office Action.

Moreover, MPEP 803 further states: “For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown ** by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP §808.02.” (Emphasis added) See also, MPEP 811 for making a restriction requirement after a first action on the merits (i.e. the Office Action of August 15, 2007) has issued. However, no factual substantiation of the alleged serious burden on the Examiner, in particular in view of the fact that a search has already been conducted for pending claims 11-33 (see e.g., “Search Information including classification, databases and other search notes” dated August 15, 2007 available on the Public PAIR page for the present application), was provided in the outstanding Office Action.

Furthermore, the species election requirement is factually deficient for the additional reason that Figs. 1-20 concern the same embodiment, which is merely shown in various states of use in Figs. 5-20. See e.g., paragraph [0044] of the specification. That is, it is impossible for the applicants to elect a species from Fig. 1-4 and 5-20, because Figs. 1-20 all concern the same preferred embodiment. In addition or in the alternate, it is noted that all pending claims read upon the preferred embodiment shown in Figs. 1-20.


In summary, the restriction requirement and the species election requirement made in the Office Action mailed January 2, 2008 are legally and factually unsupported and thus must be withdrawn. Since all pending claims satisfy the unity of invention requirement in accordance with PCT Rule 13.2 and MPEP 1850, it is respectfully requested to continue examination of all claims pending in the present application.

If the Examiner believes an interview, either telephonic or in person, will advance the prosecution of this matter, it is respectfully requested that the Examiner contact the undersigned at the Examiner's convenience.

Respectfully submitted,

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